

the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-8 of co-pending application no. 10/954,313. Claims 1-8 had been canceled from application no. 10/954,313. A non-statutory obviousness-type double patenting rejection is not proper unless it is based on allowed claims in an application having an earlier filing date.

Also, a non-statutory obviousness-type double patenting rejection is improper because all of the claims of this application are limited to a screw fastener having an end thread spaced close to the upper end portion to the stud. The end thread is wider than the slot so that it will contact the stud on the sides of the slot and prevent the screw from being pulled out of the slot. Claims 2-8 depend directly or indirectly from claim 1 and further specify that the side walls of the upper channel member include a plurality as spaced apart dimples extending length wise of the side walls, each dimple representing a location that may be selected to receive a screw fastener that is used to connect the side wall of the upper channel member to the upper end portion of a said stud. Because the thread feature and the dimples are not in the claims in any US Patent and/or pending application, it is not possible for the claim in this application to extend the term of the claims in the patent. For this reason, the Examiner is asked to reconsider and withdraw the provisional non-statutory obviousness-type double patenting rejection.

It is submitted that the claims in this application are all allowable. Accordingly, early reconsideration and allowance of this application are requested.